

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THRIVEST SPECIALTY FUNDING, LLC	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	No. 18-1877
v.	:	
WILLIAM E. WHITE,	:	
Defendant.	:	

EXPLANATION AND ORDER

AND NOW, this __17TH__ day of October, 2019, for the reasons that follow, the Court holds Defendant William E. White in **CONTEMPT** of the Court’s July 1, 2019 Order (ECF No. 25) (“Escrow Order”) confirming the Emergency Arbitrator’s Interim Award directing White to escrow \$1,250,000 pending resolution of arbitration, and imposes the civil contempt sanctions listed in paragraph 5 below:

1. A civil contempt order may issue if the district court finds that (1) “a valid order of the court existed,” (2) “the defendant[] had knowledge of the order,” and (3) “the defendant[] disobeyed that order.” *Marshak v. Treadwell*, 595 F.3d 478, 485 (3d Cir. 2009) (citation and internal quotation marks omitted). The party moving for contempt sanctions must prove each element by “clear and convincing evidence, and ambiguities must be resolved in favor of the party charged with contempt.” *John T. ex rel. Paul T. v. Delaware Cnty. Intermediate Unit*, 318 F.3d 545, 552 (3d Cir. 2003) (citations and internal quotation marks omitted).

2. Thrivest has satisfied this burden. First, the Court’s Escrow Order is valid.¹ Further, White does not dispute that he had knowledge of the Escrow Order. Finally, White does not dispute that he has not escrowed the funds.

¹ White appealed the Court’s Escrow Order, and on October 8, 2019, the Third Circuit summarily affirmed it. *See Order, Thrivest Specialty Funding v. William White*, No. 19-2771 (3d Cir. Oct. 8, 2019).

3. Once a prima facie showing of contempt is made, the charged party may raise a defense that it is unable to comply with the order. 11A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, ET AL., FEDERAL PRACTICE & PROCEDURE § 2960 (3d ed. 2019). White argues that he is financially unable to comply with the Court’s Escrow Order. The relevant focus of this defense is “*present* inability to comply with the order in question.” *United States v. Rylander*, 460 U.S. 752, 757 (1983) (citations omitted). Courts “will not be blind to evidence that compliance is now factually impossible. Where compliance is impossible, neither the moving party nor the court has any reason to proceed with the civil contempt action. It is settled, however, that in raising this defense, the [alleged contemnor] has a burden of production.” *Id.* That burden requires “evidence beyond a mere assertion of inability.” *Harris v. City of Philadelphia*, 47 F.3d 1311, 1324 (3d Cir. 1995) (citations and internal quotation marks omitted). Rather, the “contemnor must show categorically and in detail why he is unable to comply,” and “unless [the party claiming financial inability] is completely impoverished, he must comply to the extent that his finances permit.” *United States v. Baker Funeral Home, Ltd.*, 196 F. Supp. 3d 530, 554 (E.D. Pa. 2016) (citations and internal quotation marks omitted).

4. Despite multiple chances to do so, White has not satisfied his burden of proving inability to comply. White has offered only nine heavily redacted pages of bank statements for an unidentified account, covering a period from June 21, 2019 to August 20, 2019, showing that the account had a balance of \$487.48 as of August 20, 2019. ECF No. 42-1. Because the statements go only to August 20, 2019, White has not presented an up-to-date picture of his *present* inability to comply. *Rylander*, 460 U.S. at 757. Further, aside from the fact that the statements bear his name, White has not offered any sworn declaration or other proof authenticating that the statements accurately portray an account that belongs to him. Finally,

White also offers no proof—or even any assertion—that the account reflected in the statements contains all of his current assets. In short, White’s submission is far too incomplete to “show categorically and in detail why he is unable to comply.” *Baker Funeral Home*, 196 F. Supp. 3d at 554.

5. Accordingly, the Court holds White in contempt of the Court’s Escrow Order and imposes the following civil contempt sanctions:

- a. Unless and until White complies with the Escrow Order or submits adequate proof of his inability to comply, any bank, financial institution, or brokerage institution, or other person or entity holding any funds, securities, or other assets in the name of, for the benefit of, or under the direct or indirect control of White, must prohibit the withdrawal, removal, transfer, or other disposal of those funds, assets, or securities. This sanction, however, will not apply to any withdrawal, removal, transfer, or other disposal of funds necessary to allow White to make medical expenditures.
- b. Unless and until White complies with the Escrow Order or submits adequate proof of his inability to comply, White is prohibited from making any non-medical expenditures in excess of \$500 without Court approval.
- c. Plaintiff Thrivent may serve this Order on any financial institutions, banks, persons, or other entities mentioned in paragraph 5(a).
- d. The Court may impose further sanctions if White persists in his failure to either comply with the Escrow Order or prove his inability to comply. **On October 31, 2019, at no later than 2:00pm EST**, Thrivent must submit a status report updating the Court on White’s compliance.

s/Anita B. Brody

ANITA B. BRODY, J.

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